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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,020	09/27/2003	Billy Ray Delp		7685

7590 05/17/2005

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EXAMINER

AMERSON, LORI BAKER

ART UNIT PAPER NUMBER

3764

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/672,020

Applicant(s)

DELP, BILLY RAY

Examiner

L. Amerson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Applicant should submit an argument under the heading "Remarks" pointing out disagreements with the examiner's contentions. Applicant must also discuss the references applied against the claims, explaining how the claims avoid the references or distinguish from them.

#### ***Information Disclosure Statement***

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

#### ***Claim Objections***

3. The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

a. Claim 1, as broadly claimed, is rejected under 35 U.S.C. 102(b) as being anticipated by Mayer. Mayer discloses a retainer bar (9) connected to an anchor (27) having a handle (91) connected by a chain (89) to the bar (fig. 1).

Regarding the language, "that is primarily used to reduce the abdomen but is of benefit to other muscles of the human body" in line 1, "and is used to assist the user in doing sit-ups" in line b, and "the device can also be used for pull-ups by attaching the handle to an anchor overhead." In line c has not been given patentable weight because the recitations are purely functional in nature and do not recite any structure.

b. Claim 1, as broadly claimed, is rejected under 35 U.S.C. 102(b) as being anticipated by Hunker. Hunker discloses a device that attaches to a stationary anchor having foot restraint (12) connected to an anchor (27) having a handle (18) connected by a tether (13;fig. 1 and 4). Regarding the language, "that is primarily used to reduce the abdomen but is of benefit to other muscles of the human body", "and is used to assist the user in doing sit-ups", and "the device can also be used for pull-ups by attaching the handle to an anchor overhead," "to hold down the feet which attaches under the door via the door anchor assist or other suitable anchors" has not been given patentable weight because the recitations are purely functional in nature and do not recite any structure.

c. Claim 1, as broadly claimed, is rejected under 35 U.S.C. 102(b) as being anticipated by Lui. Lui discloses a device that attaches to a stationary anchor

having foot restraint (3) connected to an anchor having a handle (4) connected by a tether (14). Regarding the language, "that is primarily used to reduce the abdomen but is of benefit to other muscles of the human body", "and is used to assist the user in doing sit-ups", and "the device can also be used for pull-ups by attaching the handle to an anchor overhead," "to hold down the feet which attaches under the door via the door anchor assist or other suitable anchors" has not been given patentable weight because the recitations are purely functional in nature and do not recite any structure.

d. Claim 3, as broadly claimed, is rejected under 35 U.S.C. 102(b) as being anticipated by Hern. Hern discloses a device that attaches to a stationary anchor on the floor (fig. 1-2 and 4-5). Regarding the language, "to aid in sit-ups or to anchors overhead to aid in pull-ups that is easily transported by hand, in a small bag, in luggage or other conveyances from one point to another so that the device can be constantly available to the user" has not been given patentable weight because the recitations are purely functional in nature and do not recite any structure.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

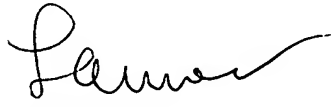
e. Claim 2, as broadly claimed, is rejected under 35 U.S.C. 102(e) as being anticipated by Tardif. Tardif discloses a device that attaches to a top of a door or other overhead anchors having assist (40), a having a handle (50) connected by a tether (20). Regarding the language, "in order to aid a person in doing pull-ups which enhances the muscles of the arms, but is also of benefit to other muscles of the human body" has not been given patentable weight because the recitations are purely functional in nature and do not recite any structure.

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson whose telephone number is (571) 272-4971. The examiner can normally be reached on Mon.-Fri from 9-6 p.m. Interviews Tue. And Thur.. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor is Justine Yu. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see

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<http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'L. Amerson', with a long, sweeping horizontal stroke extending to the right.

L. Amerson